

AMENDED IN ASSEMBLY JUNE 2, 1999  
AMENDED IN ASSEMBLY MARCH 23, 1999  
AMENDED IN ASSEMBLY MARCH 1, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 10**

**Introduced by Assembly Members Correa, Davis, and  
Ducheny  
(Principal coauthors: Assembly Members Hertzberg and  
Nakano)**

December 7, 1998

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An act to amend ~~Section~~ *Sections 23153 and 23221* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 10, as amended, Correa. Bank and corporation taxes: minimum franchise tax.

*The Bank and Corporation Tax Law generally imposes a franchise tax on corporations doing business within the limits of this state, including a minimum franchise tax on specified banks and corporations, except as provided, and provides, for income years beginning on or after January 1, 1999, for a minimum franchise tax of \$500 for the 2nd taxable year for any corporation, except as specified, that has gross receipts, less returns and allowances reportable to this state, of less than \$1,000,000 for the income year. The reduced tax applies to any*

*corporation that is a qualified new corporation, as defined, incorporated on or after January 1, 1999.*

*This bill would provide that for income years beginning on or after January 1, 2000, every qualified new corporation shall not be subject to the minimum franchise tax for the 2nd taxable year.*

The Bank and Corporation Tax Law provides that a corporation that incorporates under the laws of this state or qualifies to transact interstate business in this state shall prepay a specified minimum franchise tax of \$800, except as provided. That law also provides that, for income years commencing on or after January 1, 1999, the amount of the prepaid minimum franchise tax for a qualified new corporation, as defined, shall be \$300, unless its gross receipts, as specified, or its tax liability, exceeds specified amounts.

This bill would provide that, for income years commencing on or after January 1, 2000, ~~and before January 1, 2003~~, the amount of the prepaid minimum franchise tax for a qualified new corporation shall be \$0 for its first taxable year.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 23153 of the Revenue and*  
2 *Taxation Code is amended to read:*

3 23153. (a) Every corporation described in  
4 subdivision (b) shall be subject to the minimum franchise  
5 tax specified in subdivision (d) from the earlier of the  
6 date of incorporation, qualification, or commencing to do  
7 business within this state, until the effective date of  
8 dissolution or withdrawal as provided in Section 23331 or,  
9 if later, the date the corporation ceases to do business  
10 within the limits of this state.

11 (b) Unless expressly exempted by this part or the  
12 California Constitution, subdivision (a) shall apply to  
13 each of the following:

14 (1) Every corporation that is incorporated under the  
15 laws of this state.



(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

1 (e) Notwithstanding subdivision (a), for income years  
2 beginning on or after January 1, 1999, every “qualified  
3 new corporation” shall pay annually to the state a  
4 minimum franchise tax of five hundred dollars (\$500) for  
5 the second taxable year, *and for income years*  
6 *commencing on or after January 1, 2000, every qualified*  
7 *new corporation shall not be subject to the minimum*  
8 *franchise tax for the second taxable year.* This subdivision  
9 shall apply to any corporation that is a qualified new  
10 corporation and is incorporated on or after January 1,  
11 1999.

12 (1) The determination of the gross receipts of a  
13 corporation, for purposes of this subdivision, shall be  
14 made by including the gross receipts of each member of  
15 the commonly controlled group, as defined in Section  
16 25105, of which the corporation is a member.

17 (2) “Gross receipts, less returns and allowances  
18 reportable to this state,” means the sum of the gross  
19 receipts from the production of business income, as  
20 defined in subdivision (a) of Section 25120, and the gross  
21 receipts from the production of nonbusiness income, as  
22 defined in subdivision (d) of Section 25120.

23 (3) “Qualified new corporation” means a corporation  
24 that begins business operations at or after the time of its  
25 incorporation and that reasonably estimates that it will  
26 have gross receipts, less returns and allowances,  
27 reportable to this state for the income year of less than  
28 one million dollars (\$1,000,000). “Qualified new  
29 corporation” does not include any corporation that began  
30 business operations as a single proprietorship, a  
31 partnership, or any other form of business entity prior to  
32 its incorporation. This subdivision shall not apply to any  
33 corporation that reorganizes solely for the purpose of  
34 reducing its minimum franchise tax.

35 (4) This subdivision shall not apply to limited  
36 partnerships, as defined in Section 17935, limited liability  
37 companies, as defined in Section 17941, limited liability  
38 partnerships, as defined in Section 17948, charitable  
39 organizations, as described in Section 23703, regulated  
40 investment companies, as defined in Section 851 of the

1 Internal Revenue Code, real estate investment trusts, as  
2 defined in Section 856 of the Internal Revenue Code, real  
3 estate mortgage investment conduits, as defined in  
4 Section 860D of the Internal Revenue Code, financial  
5 asset securitization investment trusts, as defined in  
6 Section 860L of the Internal Revenue Code, qualified  
7 Subchapter S subsidiaries, as defined in Section  
8 1361(b)(3) of the Internal Revenue Code, or to the  
9 formation of any subsidiary corporation, to the extent  
10 applicable.

11 (5) For any income year beginning on or after January  
12 1, 1999, if a corporation has paid five hundred dollars  
13 (\$500) for the second taxable year under this subdivision,  
14 but in its second taxable year, the corporation's gross  
15 receipts, as determined under paragraphs (1) and (2),  
16 exceed one million dollars (\$1,000,000), an additional tax  
17 in the amount equal to three hundred dollars (\$300) for  
18 the second taxable year shall be due and payable by the  
19 corporation on the due date of its return, without regard  
20 to extension, for that year.

21 (f) Notwithstanding subdivision (a), a domestic  
22 corporation, as defined in Section 167 of the Corporations  
23 Code, that files a certificate of dissolution in the office of  
24 the Secretary of State pursuant to subdivision (c) of  
25 Section 1905 of the Corporations Code and that does not  
26 thereafter do business shall not be subject to the  
27 minimum franchise tax for income years beginning on or  
28 after the date of that filing.

29 (g) The minimum franchise tax imposed by paragraph  
30 (1) of subdivision (d) shall not be increased by the  
31 Legislature by more than 10 percent during any calendar  
32 year.

33 *SEC. 2.* Section 23221 of the Revenue and Taxation  
34 Code is amended to read:

35 23221. (a) Except as provided under subdivision (b),  
36 a corporation which incorporates under the laws of this  
37 state or qualifies to transact intrastate business in this  
38 state shall thereupon prepay the minimum tax provided  
39 in Section 23153, except that any credit union shall  
40 thereupon prepay a tax of twenty-five dollars (\$25). The

1 prepayment shall be made to the Secretary of State with  
2 the filing of the articles of incorporation or the statement  
3 and designation by a foreign corporation. The Secretary  
4 of State shall transmit the amount of the prepayment to  
5 the Franchise Tax Board. The Franchise Tax Board shall  
6 certify to the Secretary of State on an individual or class  
7 basis those domestic or foreign corporations which are  
8 exempt from prepayment or for which prepayment to  
9 the Secretary of State is waived.

10 (b) (1) For income years commencing on or after  
11 January 1, 1997, and before January 1, 1999, the amount  
12 payable by a qualified new corporation under subdivision  
13 (a) shall be six hundred dollars (\$600).

14 (2) For income years commencing on or after January  
15 1, 1999, and before January 1, 2000, the amount payable  
16 by a qualified new corporation under subdivision (a) shall  
17 be three hundred dollars (\$300).

18 (3) For income years commencing on or after January  
19 1, 2000, ~~and before January 1, 2003~~, the amount payable  
20 by a qualified new corporation under subdivision (a) shall  
21 be zero dollars (\$0).

22 ~~(4) For income years commencing on or after January~~  
23 ~~1, 2003, the amount payable by a qualified new~~  
24 ~~corporation under subdivision (a) shall be three hundred~~  
25 ~~dollars (\$300).~~

26 (c) For purposes of this section, “qualified new  
27 corporation” means a corporation that begins operation  
28 at or after the time of its incorporation and that  
29 reasonably estimates that, for the income year, it will have  
30 both gross receipts, less returns and allowances  
31 reportable to this state, of one million dollars (\$1,000,000)  
32 or less and a tax liability under Section 23151 that does not  
33 exceed eight hundred dollars (\$800). “Qualified new  
34 corporation” does not include any corporation that began  
35 business operations as a single proprietorship, a  
36 partnership, or any other form of business entity prior to  
37 its incorporation.

38 (1) The determination of gross receipts of a  
39 corporation, for purposes of this section, shall be made by  
40 including the gross receipts of each member of the

commonly controlled group, as defined in Section 25105, of which the bank or corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(d) Subdivision (b) shall not apply to any corporation if 50 percent or more of its stock is, or will be upon the initial issuance of stock, owned by another corporation.

(e) (1) For income years commencing on or after January 1, 1997, and before January 1, 1999, if a corporation paid six hundred dollars (\$600) under paragraph (1) of subdivision (b), but for its first income year the corporation’s tax liability under Section 23151 exceeds eight hundred dollars (\$800), or the corporation’s gross receipts, as determined under paragraph (2) of subdivision (c), exceed one million dollars (\$1,000,000), an additional tax in an amount equal to two hundred dollars (\$200) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

(2) For income years commencing on or after January 1, 1999, if a corporation paid three hundred dollars (\$300) under paragraph (2) ~~or (4)~~ of subdivision (b), but for its first income year the corporation’s tax liability under Section 23151 exceeds eight hundred dollars (\$800), or the corporation’s gross receipts, as determined under paragraphs (1) and (2) of subdivision (c), exceed one million dollars (\$1,000,000), an additional tax in an amount equal to five hundred dollars (\$500) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

(f) The amendments made by the act adding this subdivision shall apply to income years commencing on or after January 1, 1999.

~~SEC. 2.—~~

1    *SEC. 3.* The Secretary of State shall report to the  
2    Legislature by January 31, 2002, the number of new small  
3    businesses incorporated in each of the previous calendar  
4    years since 1996 and the length of time those businesses  
5    continued to do business.

6    ~~*SEC. 3.*~~

7    *SEC. 4.* This act provides for a tax levy within the  
8    meaning of Article IV of the Constitution and shall go into  
9    immediate effect.

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